

Tentative Rulings for November 16, 2016
Departments 402, 403, 501, 502, 503

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

15CECG01373 *Shaw's Structures Unlimited, Inc. v. Friends of the Big Fresno Fair* (Dept. 501)

15CECG00818 *Robmor Investments v. Dennis Montalbano* (Dept. 502)

15CECG01660 *Lopez et al. v. Martinez* (Dept. 503)

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

13CECG03308 *First Choice Medical Group, LLC v. Santé Community Physicians IPA Medical Corporation, et al.* is continued to Thursday, November 17, 2016 at 3:30 p.m. in Dept. 503.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 402

Tentative Rulings for Department 403

(30)

Tentative Ruling

Re: **Sheri McGovern v. Stephanie Bradshaw**
Superior Court Case No. 15CECG00262

Hearing Date: Wednesday November 16, 2016 (**Dept. 403**)

Motion: Default Hearing

Tentative Ruling:

To Deny.

If oral argument is requested it will be entertained on Thursday, November 17th, 2016 at 3:00 p.m. in Department 403.

Explanation:

Defaulting parties have a constitutional right to adequate notice of the maximum judgment that may be assessed against them. It is "fundamental to the concept of due process that a defendant be given notice of the existence of a lawsuit and notice of the *specific relief* which is sought in the complaint served on him." (*Marriage of Lippel* (1990) 51 Cal.3d 1160, 1166 emphasis added.) The prayer or complaint provide such notice by setting the ceiling on default judgments. (*Barragan v. Banco BCH* (1986) 188 Cal.App.3d 283, 305; *National Diversified Services, Inc. v. Bernstein* (1985) 168 Cal.App.3d 410, 418; *Greenup v. Rodman* (1986) 42 Cal.3d 822, 829-830.)

General demands in the prayer do not provide adequate notice of the relief sought to support a default judgment. For example a prayer for "*damages in excess of \$20,000*" will not support a default judgment for more than \$20,000. (*Becker v. S.P.V. Const. Co., Inc.* (1980) 27 Cal.3d 489, 494-495; *Electronic Funds Solutions v. Murphy* (2005) 134 Cal.App.4th 1161, 1173.)

Plaintiff seeks damages "not less than \$25,000" in her complaint. (Complaint, ¶ 6.) Plaintiff then requests judgment in the amount of \$63,831. (JUD-100, ¶ 6.) But since the complaint sets the ceiling, judgment is limited to \$25,000 *unless* Plaintiff chooses to amend.

CIV-100

A plaintiff that seeks a default judgment when the defendant has not responded to the complaint within the time for doing so must first submit the Judicial Council form CIV-100, Request for Court Judgment. Use of this form is mandatory. (*Simke, Chodos,*

Silberfeld & Anteau, Inc. v Athans (2011) 195 Cal.App.4th 1275, 1287.) Plaintiff has not submitted form CIV-100; it must be submitted prior to judgment.

Pursuant to California Rules of Court, rule 3.1312 and Code of Civil Procedure section 1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: KCK **on 11/14/16**
 (Judge's initials) (Date)

(24)

Tentative Ruling

Re: ***Definitive Staffing Solutions, Inc. v. Tri-State Employment Services, Inc.***
Court Case No. 16CECG03201

Hearing Date: **November 16, 2016 (Dept. 403)**

Motion: Petition by Definitive Staffing Solutions, Inc., to Confirm Arbitration
Award and Enter Judgment

Tentative Ruling:

To grant, with Petitioner to submit directly to this Court a judgment within 7 days of service of the minute order, a proposed judgment that conforms to the petition to confirm arbitration award.

Pursuant to California Rules of Court, rule 3.1312 and Code of Civil Procedure section 1019.5(a), no further written order is necessary. The minute order adopting this ruling will serve as the order of the court, and service by the clerk of the minute order will constitute notice of the order.

If oral argument is requested it will be entertained on Thursday, November 17th, 2016 at 3:00 p.m. in Department 403.

Tentative Ruling

Issued By: KCK on 11/15/16
 (Judge's initials) (Date)

Tentative Rulings for Department 501

03

Tentative Ruling

Re: **County of Fresno v. Adams**
Case No. 16 CE CG 02434

Hearing Date: November 16th, 2016 (Dept. 501)

Motion: Plaintiff's Motion for Order of Possession

Tentative Ruling:

To grant the County of Fresno's motion for an order of possession. (Code Civ. Proc. § 1255.410.)

Explanation:

Under Code of Civil Procedure section 1255.410, subdivision (a), "At the time of filing the complaint or at any time after filing the complaint and prior to entry of judgment, the plaintiff may move the court for an order for possession under this article, demonstrating that the plaintiff is entitled to take the property by eminent domain and has deposited pursuant to Article 1 (commencing with Section 1255.010) an amount that satisfies the requirements of that article."

Also, under section 1255.410, subdivision (b), "The plaintiff shall serve a copy of the motion on the record owner of the property and on the occupants, if any. The plaintiff shall set the court hearing on the motion not less than 60 days after service of the notice of motion on the record owner of unoccupied property. If the property is lawfully occupied by a person dwelling thereon or by a farm or business operation, service of the notice of motion shall be made not less than 90 days prior to the hearing on the motion." (Code Civ. Proc. § 1255.410, subd. (b).)

In addition, "Not later than 30 days after service of the plaintiff's motion seeking to take possession of the property, any defendant or occupant of the property may oppose the motion in writing by serving the plaintiff and filing with the court the opposition. If the written opposition asserts a hardship, it shall be supported by a declaration signed under penalty of perjury stating facts supporting the hardship. The plaintiff shall serve and file any reply to the opposition not less than 15 days before the hearing." (Code Civ. Proc. § 1255.410, subd. (c).)

"If the motion is not opposed within 30 days of service on each defendant and occupant of the property, the court shall make an order for possession of the property if the court finds each of the following: (A) The plaintiff is entitled to take the property by eminent domain. (B) The plaintiff has deposited pursuant to Article 1 (commencing with Section 1255.010) an amount that satisfies the requirements of that article." (Code Civ. Proc. § 1255.410, subd. (d)(1)(A), (B).)

Here, plaintiff has met the basic requirements for obtaining an order of prejudgment possession. Plaintiff is entitled to take the property by eminent domain, since it is a governmental entity. The Board of Supervisors has adopted a resolution of necessity regarding the taking of the parcel, which is prima facie evidence that the seizure is necessary and proper.

Also, it appears that the taking will not cause any real hardship to defendant property owners, since they are not actually using the parcel for farming or residence. In fact, the parcel is apparently totally unimproved and unoccupied. The amount of property being taken is also minimal, and the project will not interfere with vehicle access to the rest of the parcel.

In addition, the County has deposited the amount of probable compensation with the State Treasurer, and it has filed an appraiser's declaration regarding the value of the property being taken.

In addition, plaintiff has filed a proof of service showing that the Adams were served with notice of the motion on August 10th and 11th, more than 60 days before the hearing. The Adams have not filed any opposition within 30 days of the hearing date, or made any attempt to show that they will suffer undue hardship from the taking. Therefore, the court intends to issue an order regarding possession of the parcel.

Pursuant to CRC 3.1312 and CCP §1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: MWS on 11/15/16
 (Judge's initials) (Date)

(20)

Tentative Ruling

Re: ***Phillips et al. v. State of California et al.***, Superior Court Case No. 15CECG02201

Hearing Date: **November 16, 2016 (Dept. 501)**

Motion: Plaintiffs' Motion to Compel Further Responses to Requests for Admissions and Form Interrogatory No. 17.1

Tentative Ruling:

To grant. Within 40 days of service of the order by the clerk, the State shall serve further verified responses to Requests for Admission ("RFA") nos. 1-5, and Form Interrogatory no. 17.1. No monetary sanctions will be imposed.

Explanation:

Under Code Civ. Proc. §§ 2030.220(a) and 2033.220(a), the State is required to supply responses to plaintiffs' interrogatory and RFAs that are "as complete and straightforward as the information **reasonably available** to [the State] permits." (Emphasis added.) To the extent the State "does not have personal knowledge sufficient to respond fully to [the] interrogatory," the State is required to "make a **reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations**, except where the information is equally available to the propounding party." (Code Civ. Proc. § 2030.220(c) (emphasis added). Similarly, if the State lacks information or knowledge to admit all or part of a request for admission, the State must affirmatively state "that a reasonable inquiry concerning the matter in the particular request has been made, and that the information known or readily obtainable is insufficient to enable that party to admit the matter." (Code Civ. Proc. § 2033.220(c).)

Here, the State attempts to insulate itself from any obligation to conduct an inquiry by claiming that it did not state it lacked sufficient information to respond. While it may not have used those exact words, that is the gist of the objections. The State admitted it lacked knowledge regarding "the activities of particular state officers or agencies or branches" and that its responses were solely "based on information known and readily apparent to counsel for the State." The State effectively admitted that it does not have sufficient information to fully respond, yet still refused to conduct an inquiry.

"Since requests for admissions are not limited to matters within personal knowledge of the responding party, that party has a duty to make a reasonable investigation of the facts before answering items which do not fall within his personal knowledge." (*Grace v. Mansourian* (2015) 240 Cal.App.4th 523, 529, internal quotes and citation omitted.) The State has made no inquiry of other agencies, and therefore has not satisfied its obligation to make a reasonable investigation. The State has not shown that this information is equally available to plaintiffs.

The State's reliance on *People ex rel. Lockyer v. Superior Court* ("Lockyer") (2004) 122 Cal.App.4th 1060, is misplaced. *Lockyer* establishes that state agencies are distinct and separate governmental entities. Since the party responding to an inspection demand is only obligated to produce documents within its possession, custody or control, the State as a party need not produce responsive documents possessed by non-party state agencies. The court applied Code Civ. Proc. § 2031, which did not require reasonable investigation of third parties, as is required in responding to interrogatories and RFAs.

The court finds persuasive *Sec. & Exch. Comm'n v. Thrasher* (S.D.N.Y. Sept. 6, 1996) 1996 WL 507318, where the district court required the SEC to inquire of the U.S. Attorney's Office in responding to RFAs.

Accordingly, the State must conduct a reasonable inquiry prior to responding to the RFAs and related interrogatory 17.1, and provide such responsive information as it can obtain. And as stated in the moving papers, the substantive information provided in response to interrogatory 17.1 is deficient and fails to provide the information requested.

Pursuant to Cal. Rules of Court, Rule 3.1312(a) and Code Civ. Proc. § 1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: MWS **on 11/15/16**
 (Judge's initials) (Date)

(5)

Tentative Ruling

Re: ***County of Fresno v. George P. Raven and Jerry A. Raven***
Superior Court Case No. 16 CECG 02433

Hearing Date: November 16, 2016 **(Dept. 501)**

Motion: Order of Possession Pursuant to CCP § 1255.410

Tentative Ruling:

To grant the motion pursuant to CCP § 1255.410(d)(1).

Explanation:

No opposition has been filed. The requirements of CCP § 1255.410(a) have been met. The notice of motion contains the required language regarding the right to oppose the motion and the filing deadline for any such opposition. See Notice of Motion filed on August 8, 2016 at page 2 lines 6-10. The County is proceeding via eminent domain. See Complaint filed on July 29, 2016 and the Declaration of Alimi. The motion describes the property which is subject to taking and the date upon which the possession is to take place—30 days after the service of the order granting the motion; to wit, December 20, 2016. See proposed Order.

The service requirements of CCP § 1255.410(b) have been met. The requirements of CCP § 1255.410(d)(1) have been met. The County is entitled to take the property by eminent domain and has deposited an amount that meets the requirements of CCP 1255.010. See Declaration of Dunshee filed on August 5, 2016. Therefore, the motion will be granted.

Pursuant to California Rules of Court, rule 3.1312(a) and Code of Civil Procedure section 1019.5, subd. (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: MWS on 11/15/16
 (Judge's initials) (Date)

Tentative Rulings for Department 502

(6)

Tentative Ruling

Re: ***Tucker v. Young***
Superior Court Case No.: 15CECG03357

Hearing Date: November 16, 2016 (**Dept. 502**)

Motion: By Defendant James Young to strike exhibit A of Plaintiff's notice of intent to introduce entire unedited video testimony in evidence at trial

Tentative Ruling:

To grant, with Plaintiff to replace exhibit A with a page and line citation only, "of the parts of the deposition to be offered" at trial.

Explanation:

Code of Civil Procedure section 2025.340, subdivision (m), requires a party intending to offer a video recording of a deposition under section 2025.620 to notify the court and all parties in writing "of the parts of the deposition to be offered." The statute contemplates submission citations of where the offered testimony can be found, not simply filing a copy of the deposition transcript. While the notice must be made within sufficient time for objections to be made and rule on by the judge to whom the case is assigned for trial, it would be in the nature of a motion in limine to the trial judge.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: DSB on 11/14/16
(Judge's initials) (Date)

(29)

Tentative Ruling

Re: ***Ignacio Ortega, et al. v. KM546 Partners, LP, et al., and related cross-actions***
Superior Court Case No. 12CECG03888

Hearing Date: November 16, 2016 (Dept. 502)

Motions: Cross-Defendants CVL&M, Ltd., dba Central Valley Landscape, Inc.; Masaak Kimura, dba The Landscape Express; Baker Custom Cabinets; and Golden State Woodworking, Inc.'s applications for good faith settlement

Tentative Ruling:

To deny all four applications, without prejudice. (Code Civ. Proc. §877.6(a)(2).)

Explanation:

Code of Civil Procedure section 877.6, subdivision (a)(2) requires notice of an application for determination of good faith settlement be served on all parties to the action. Here, the proofs of service for each of the four applications do not show service on Cross-Defendant Staggs Concrete or Intervenor AIG Specialty Insurance Company. Accordingly, the applications of Cross-Defendants CVL&M, Ltd., dba Central Valley Landscape, Inc.; Masaak Kimura, dba The Landscape Express; Baker Custom Cabinets; and Golden State Woodworking, Inc., are denied without prejudice.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: DSB on 11/14/16
(Judge's initials) (Date)

Tentative Rulings for Department 503